

Entered on Docket
July 09, 2010

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Signed: July 08, 2010

EDWARD D. JELLEN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
REJ PROPERTIES, INC.,
Debtor./

No. 07-41274 EDJ
Chapter 11

ALISE MALIKYAR,
Plaintiff,

Adv. Pro. No. 10-04114 AJ

vs.

CHRISTOPHER MOSER,
Defendant./

MEMORANDUM: MOTION TO REMAND TO STATE COURT

The above-captioned adversary proceeding was commenced May 7, 2010 when the defendant herein, Christopher Moser ("Moser"), filed a Notice of Removal of State Court Action. Moser is the trustee in bankruptcy of the estate of Robert Jacobson ("Jacobson"), pending in the United States Bankruptcy Court for the Eastern District of

Memorandum

1 Texas.¹ The removed action was filed by Alise Malikyar
2 ("Malikyar"), Jacobson's spouse, in the Alameda County Superior
3 Court, State of California. Malikyar's action against Moser alleges
4 that Moser improperly treated her separate property as property of
5 the Jacobsen bankruptcy estate. Her complaint includes causes of
6 action for negligence, intentional tort, and fraud.

7 On May 17, 2010 Malikyar filed a motion to remand this action
8 to the Alameda Superior Court. A hearing was held on Malikyar's
9 motion on June 21, 2010. William McLaughlin appeared on behalf of
10 Moser. Malikyar did not appear. For the reasons hereinafter
11 discussed, the court will deny Malikyar's motion, and instead, will
12 transfer venue to the United States Bankruptcy Court for the Eastern
13 District of Texas.

14 In her motion to remand, Malikyar argues that this court lacks
15 jurisdiction to hear her complaint against Moser because her claims
16 arise under state law. The court agrees that it lacks subject
17 matter jurisdiction, but not for the reason urged by Malikyar.

18 This is so because a trustee appointed by a bankruptcy court
19 may not be sued in a foreign jurisdiction without permission of the
20 court that appointed the trustee. See In re Crown Vantage, 421 F.3d
21 963, 970 (9th Cir. 2005) (holding that "a party must first obtain
22 leave of the bankruptcy court before it initiates an action in
23 another forum against a bankruptcy trustee or other officer
24 appointed by the bankruptcy court for acts done in the officer's

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26 ¹Case no. 07-41092.

1 official capacity."); see also Barton v. Barbour, 104 U.S. 126, 136-
2 37 (1881) (holding that the common law bars suits against receivers
3 in a state court other than the court charged with administration of
4 the estate, absent leave of that court.).

5 Moser was appointed trustee of the Jacobsen bankruptcy estate
6 in the bankruptcy court for the Eastern District of Texas. Moser's
7 "home court" has not granted Malikyar leave to bring an action
8 against Moser in another forum.

9 Therefore, the court directs Moser to submit an order denying
10 Malikyar's motion to remand this adversary proceeding to state
11 court, and transferring it to the United State Bankruptcy Court for
12 the Eastern District of Texas.

13 **END OF ORDER**
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Memorandum

COURT SERVICE LIST

Alise Malikyar
P.O. Box 1386
559 Mangels Avenue
Lafayette, CA 94549

William F. McLaughlin
Law Offices of William F. McLaughlin
1305 Franklin St. #301
Oakland, CA 94612

Memorandum

4

Notice Recipients

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Recipients of Notice of Electronic Filing:

aty William F. McLaughlin mcl551@aol.com

TOTAL: 1

Recipients submitted to the BNC (Bankruptcy Noticing Center):

pla	Alise Malikyar	P.O. Box 1386	559 Mangels Avenue	Lafayette, CA 94549	
dft	Christopher Moser	2001 Bryan Street, Suite 1800	Dallas, TX 75201		
ust	Office of the U.S. Trustee/Oak	Office of the U.S. Trustee	1301 Clay St. #690N	Oakland, CA 94612	

TOTAL: 3